



**US Army Corps
of Engineers** ®
Fort Worth District

Public Notice

PROPOSAL FOR INCLUSION OF NRCS
CATEGORICAL EXCLUSIONS UNDER NATIONWIDE
PERMIT 23 - REQUEST FOR COMMENTS

Date: May 13, 2011

The purpose of this public notice is to inform you of proposal from the U.S. Army Corps of Engineers (USACE) to authorize Natural Resources Conservation Service (NRCS) approved categorical exclusions for inclusion under Nationwide Permit 23 (NWP 23). We hope you will participate in this process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

PROPOSAL FOR INCLUSION OF NRCS CATEGORICAL EXCLUSIONS UNDER NATIONWIDE PERMIT 23 - REQUEST FOR COMMENTS

On May 13, 2011, the U.S. Army Corps of Engineers published in the Federal Register, a proposal to authorize Natural Resources Conservation Service (NRCS) approved categorical exclusions for inclusion under Nationwide Permit 23 (NWP 23).

NWP 23 is used to authorize certain actions by other Federal agencies that are categorically excluded under the National Environmental Policy Act (NEPA), in accordance with 40 CFR Parts 1500 to 1508, because the action is included within a category of actions that have no more than minimal individual and cumulative adverse environmental effects.

The NRCS has requested approval of their 26 categorically excluded activities for inclusion for verification under NWP 23. The list of NRCS categorically excluded activities was approved by the Council on Environmental Quality and has been finalized by the NRCS. Inclusion of NRCS categorically excluded activities under NWP 23 is intended to reduce duplicative Federal processes and to expedite Department of the Army authorizations for those activities that involve a discharge of dredged or fill material and/or structures or work in waters of the United States that have no more than minimal individual and cumulative adverse environmental effects on the aquatic environment.

Detailed information on the proposal, including the list of NRCS Categorical Exclusion being considered is available through the Corps webpage at <http://www.usace.army.mil/CECW/Pages/nnpi.aspx> or the Federal Register at <http://www.gpo.gov/fdsys/pkg/FR-2011-05-13/pdf/2011-11831.pdf>.

Interested parties are invited to submit comments, identified by docket number COE-2011-0008, within 60 days by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> at docket number COE-2011-0008. Please see the Federal Register notice for instructions on submitting comments.
- E-mail: Karen.mulligan@usace.army.mil. Include COE-2011-0008 in the subject line of the message.
- Mail: U.S. Army Corps of Engineers, ATTN: CECW-CO-R (Karen Mulligan), 441 G Street NW, Washington, D.C. 20314-1000.
- Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

The current NWP 23 was issued on March 12, 2007 (see 72 FR 11092), and expires on March 18, 2012. In the February 16, 2011, issue of the Federal Register (76 FR 9174), the Corps proposed to reissue NWP 23 without any changes. The process for approving categorical exclusions for use with NWP 23 is independent of the rulemaking process for reissuing or modifying NWP 23. If any additional agency categorical exclusions are approved for use with NWP 23, a new Regulatory Guidance Letter will be issued but the NWP itself will not be affected.

Additional information about the USACE Regulatory program can be found at:
http://www.usace.army.mil/CECW/Pages/cecwo_reg.aspx.